IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

OMAHA STEAKS, INTERNATIONAL, INC., a Nebraska Corporation, **Plaintiff** **v.** **SUNIL BHASIN d/b/a "Steaks from Omaha"** **Defendant**	**Case No. 17-cv-____** **COMPLAINT AND JURY DEMAND**

PARTIES, JURISDICTION & VENUE

1. Plaintiff Omaha Steaks International, Inc. ("Omaha Steaks") is a Nebraska corporation with its principal place of business in Omaha, Nebraska.

2. On information and belief, Defendant Sunil Bhasin d/b/a "Steaks from Omaha" is a resident of the State of California.

3. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1338(a), as this action arises under an Act of Congress relating to trademarks; 28 U.S.C. § 1338(b), as the claim of unfair competition is joined with the substantial and the related claim under the trademark laws; and 28 U.S.C. § 1367(a), supplemental jurisdiction over state law claims.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2).

FACTUAL BACKGROUND

5. Omaha Steaks has advertised and sold steak and other beef and food products under the "Omaha Steaks" trademark since as early as 1958.

6. Omaha Steaks has invested significant time and money developing and promoting the "Omaha Steaks" name, brand, and trademark and creating and maintain good will associated with its trademark and goods sold thereunder.

7. To protect the assets associated with its business, good will, and reputation, Omaha Steaks has applied for and received numerous United States trademark registrations (the "Omaha Steaks Marks"), including, but not limited to, the following:

Registration Date	Registration No.	Trademark
12/06/1988	1,515,602	OMAHA STEAKS
09/24/1996	2,002,499	OMAHA STEAKS ANGUS
05/11/2004	2,840,193	PREMIUM HEARTLAND QUALITY OMAHA STEAKS SINCE 1917
03/30/2010	3,768,690	HEARTLAND QUALITY OMAHA STEAKS® SINCE 1917
03/30/2010	3,768,691	HEARTLAND QUALITY OMAHA STEAKS® SINCE 1917

8. The Omaha Steaks Marks have been in continuous use and extensively promoted in connection with Omaha Steaks' meat and other food products.

9. As a result of Omaha Steaks' widespread use of its Omaha Steaks Marks, the extensive advertising and promotion of Omaha Steak products, and the exceptional marketplace acceptance

of those products, the Omaha Steaks Marks are famous, have acquired secondary meaning, and are recognized by the consuming public as identifying Omaha Steaks as the source and origin of such services and distinguishing Omaha Steaks' products from others.

DEFENDANT'S KNOWLEDGE OF OMAHA STEAKS MARKS

10. Defendant is aware of the Omaha Steaks Marks and the tremendous good will associated with that mark, and actually appeared in a trademark infringement action brought by Omaha Steaks against a third party. *Omaha Steaks Int'l, Inc. v. Pathak,* 2:09-cv-02854 (C.D. Cal.) (filing Nos. 105, 106, 134).

11. Defendant attempted to sue Omaha Steaks for alleged misrepresentations made in the lawsuit referenced in ¶10. *Bhasin v. Pathak & Omaha Steaks Int'l, Inc.,* 2:12-cv-06582 (C.D. Cal.). The complaint was stricken under the Anti-SLAPP statute, and attorney fees awarded to Omaha Steaks. *Id.* at Filing No. 45.

DEFENDANT'S WRONGFUL ACTIONS

12. Defendant infringed and presumably continues to infringe the Omaha Steaks Marks by, at a minimum, the following:

a. Advertising as "Steaks from Omaha." Defendant's misleading advertisements give rise to the likelihood of confusion, mistake and / or deception as to the source, origin, association, affiliation, sponsorship, or approval of Omaha Steaks.

b. Cybersquatting. Defendant, with full knowledge of Omaha Steaks' rights in the aforementioned trademarks and the domain name www.omahasteaks.com, have adopted and are using the trademark "Steaks from Omaha" and the domain name www.steaksfromomaha.com.

13. Defendant's unauthorized activity arose after the Omaha Steaks Marks became famous.

14. Defendant's acts have been and are being committed willfully and with full knowledge of Omaha Steaks and its intellectual property rights.

15. Defendant's conduct has caused and will cause irreparable injury and damage to Omaha Steaks' business, reputation, and good will. Omaha Steaks has no adequate remedy at law.

FIRST CLAIM FOR RELIEF – TRADEMARK INFRINGEMENT

16. The allegations contained in the foregoing paragraphs are incorporated by reference as if fully set forth herein.

17. Omaha Steaks owns the Omaha Steaks Marks, valid, registered trademarks

18. Defendant's distribution, offering for sale and promotion of steaks under the name "Steaks from Omaha" in interstate commerce, and by using this confusingly similar mark in its domain name (www.steaksfromomaha.com) is likely to cause confusion, to cause mistake, or to deceive customers, and constitutes infringement of Omaha Steaks' rights in the Omaha Steaks Marks in violation of Section 32 of the Lanham Act, 15 U.S.C. §1114 and 15 U.S.C. § 1125(a)(1)(A).

SECOND CLAIM FOR RELIEF – TRADEMARK DILUTION

19. The allegations contained in the foregoing paragraphs are incorporated by reference as if fully set forth herein.

20. The Omaha Marks are famous, distinctive, and have acquired strong secondary meaning as one particular source of meat products.

21. Defendant is using identical or nearly identical marks in commerce.

22. Defendant's use began after the Omaha Steaks Marks became famous.

23. Defendant's use of the offending mark is likely to cause dilution by blurring or dilution by tarnishment in violation of 15 U.S.C. § 1125(c)(1).

THIRD CLAIM FOR RELIEF – CYBERPIRACY / CYBERSQUATTING

24. The allegations contained in the foregoing paragraphs are incorporated by reference as if fully set forth herein.

25. Defendant registered, trafficked in, and used the domain name www.steaksfromomaha.com, which is confusingly similar to Omaha Steaks' domain name, www.omahasteaks.com, which Omaha Steaks registered and has used since at least 1995.

26. On the www.steaksfromomaha.com website, Defendant offers goods which are identical or substantially similar to the goods and services offered by Omaha Steaks on its website.

27. Defendant registered and uses the domain name www.steaksfromomaha.com in order to profit from Omaha Steaks' domain name in bad faith and with the intent to deceive consumers into believing that Defendant's website is sponsored by, affiliated with, approved by, or otherwise connected to Omaha Steaks.

28. Defendant's actions with respect to the domain name www.steaksfromomaha.com constitute cyberpiracy / cybersquatting in violation of Secion 43(d) of the Lanham Act, 15 U.S.C. § 1125(d)

FOURTH CLAIM FOR RELIEF – VIOLATION OF NEBRASKA UNIFORM DECEPTIVE TRADE PRACTICES ACT

29. The allegations contained in the foregoing paragraphs are incorporated by reference as if fully set forth herein.

30. Defendant's acts and omissions constitute a violation of the Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-302, *et seq.* In violation of the Deceptive Trade Practices Act, Defendant's actions include, without limitation: (1) causing confusion or misunderstanding as to affiliation, connection, or association with their certification by another; (2) representing that goods or services have sponsorship or approval, or that Defendant has sponsorship, approval,

status, affiliation, or connection that it does not have; (3) willfully engaging in the trade practice knowing it to be deceptive.

REQUEST FOR RELIEF

Omaha Steaks respectfully request that the Court enter its Order as follows:

A. Enjoining Defendant from:

- using the trademark "Steaks from Omaha;"
- making misrepresentations, or false or misleading representations of fact, which are suggestive that Defendant shares some association, approval, or authorization from Omaha Steaks and/or that Omaha Steaks is an interested party in the businesses represented by or associated with Defendant;
- engaging in unfair competition and deceptive trade practices and engaging in infringement, dilution, and/or disparagement of the Omaha Steaks trademarks;

B. Awarding Omaha Steaks actual damages in an amount to be proved at trial, including, but not limited to, any and all damages caused to the Omaha Steaks Marks, and to the Omaha Steaks brand by reason of Defendant's wrongful conduct;

C. Directing Defendant to disgorge all of Defendant's profits, direct and indirect, attributable to its wrongful conduct;

D. Directing Defendant to transfer the domain www.steaksfromomaha.com to Omaha Steaks.

E. Awarding Omaha Steaks its costs and attorney's fees pursuant to 15 U.S.C. § 1117 and Neb. Rev. Stat. §§ 59-1609 & 87-303;

F. Finding Defendant's' acts of infringement, dilution, and unfair competition to be intentional and willful, and awarding treble damages pursuant to 15 U.S.C. § 1117; and

G. Directing any and all further and other relief the Court deems equitable.

WHEREFORE, Plaintiff requests judgment in its favor against Defendant as herein described.

JURY DEMAND

Omaha Steaks hereby demands trial by jury.

June 6, 2017

/s/ Nora M. Kane

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